

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENNETH EDWARD BOLTON, III,

Petitioner,

v.

CARMEN PALMER,

Respondent.

Case No. 1:17-cv-666

HON. JANET T. NEFF

_____/

ORDER

This is a habeas corpus petition filed pursuant to 28 U.S.C. § 2254. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R) recommending that this Court deny the petition as barred by the one-year statute of limitations. The matter is presently before the Court on Petitioner's objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. The Court grants the objection.

Petitioner asserts that the Magistrate Judge applied an incorrect date in calculating the expiration of limitations period, using a date of March 8, 2016 as the date the Michigan Supreme Court denied his application for leave to appeal, when the date was actually May 2, 2016 (Pet'r Obj., ECF No. 6 at PageID.48-49; R & R, ECF No. 5 at PageID.43). Petitioner provides a copy of Michigan Supreme Court order denying leave, which is dated May 2, 2016 (ECF No. 6-1). The Court has verified the May 2, 2016 date, which results in different outcome with respect to the

timeliness of his habeas corpus petition.¹ Accordingly, the Court rejects the Report and Recommendation, and refers this matter back to the Magistrate Judge for further consideration.

Therefore:

IT IS HEREBY ORDERED that the Objection (ECF No. 6) is GRANTED and the Report and Recommendation of the Magistrate Judge (ECF No. 5) is rejected.

IT IS FURTHER ORDERED that this case is referred back to the Magistrate Judge for further consideration.

Dated: December 13, 2017

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

¹ The Court notes that Petitioner omitted the information concerning the Michigan Supreme Court order from his petition and additionally provided the wrong case number for his state court appeal, which may have contributed to the incorrect date in the Report and Recommendation (*see* ECF No. 1 at PageID.2-3).